

IN RE THE MATTER OF:

Sharon Krull, MPH  
Senior Director of Quality Assurance and Food Safety  
Red Robin Gourmet Hamburgers  
6312 S. Fiddler's Green Circle, # 200N  
Greenwood Village, CO 80111

Re: Variance Request Dated July 29, 2010 and Section 195,  
Reduced Oxygen Packaging (ROP); criteria

Order to Approve a Variance

You are hereby notified that based on the recommendation of the Food Protection Program, Indiana State Department of Health (ISDH), and as authorized by Indiana Code (IC) 16-19-3-4.3 and IC 16-42-5-5.2, the State Health Commissioner hereby orders that a variance be approved to Red Robin Gourmet Hamburgers, 6312 S. Fiddler's Green Circle, # 200N, Greenwood Village, CO 80111. An onsite evaluation was conducted by representatives of the ISDH Food Protection Program on October 14, 2010 with the assistance of Red Robin quality assurance personnel at the Noblesville, IN location. Based on their findings and supplemental information provided to the ISDH the variance application is considered satisfactory. This approval is based on the variance application submitted on July 29, 2010, # 29-2010 and additional clarifying documentation provided on October 20, 2010.

Order

This **VARIANCE APPROVAL** is based on the following criteria:

- The HACCP system for the affected product does not change from what has been submitted;
- The list of ROP food items covered under this approval does not change without prior authorization from this agency;
- As stated in the supplemental information:
  1. All food items listed shall be cooked to at least 165 degrees F and then immediately cooled, frozen, and kept frozen until reheating occurs. The cooling process shall not exceed the parameters provided in Section 189. Reheated product shall conform to the parameters specified in Section 188 and will be discarded if not used within the same day;
  2. The freezer unit where the ROP product is stored shall be provided with an accurate ambient air temperature measuring device and it shall be checked and recorded twice daily;

3. The chubbed ROP products shall be tagged with a label that indicates the last day each chubbed bag can be used with a maximum hold time of 9 days in a frozen state. Any product exceeding this limit shall be discarded;
- All other provisions provided in law shall be complied with at all times;
  - The ISDH and/or local health department regulatory personnel may evaluate compliance with this order in the future at any or all of the listed locations. A copy of this order and application information must be maintained at each location; and
  - Additional locations may be added and approved by amending this variance.

**If you wish to request an administrative review or stay of effectiveness of this decision pursuant to Ind. Code §40-21.5-3-7(a), you must petition for such review in writing. The petition must state facts demonstrating that:**

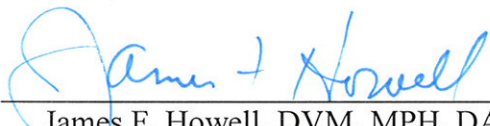
- a. you are a person to whom the decision is specifically directed;
- b. you are aggrieved or adversely affected by the decision; or,
- c. you are entitled to review under any law.

**Your request for review or stay of effectiveness must be filed in writing with the State Health Commissioner, 2 North Meridian Street, Indianapolis, Indiana 46204, on or before November 18, 2010. If no request for review or stay of effectiveness is filed by November 18, 2010, this decision shall become final.**

DATED AT INDIANAPOLIS, INDIANA THIS 25<sup>th</sup> DAY OF OCTOBER 2010.

PURSUANT TO IC 16-19-3-4.3 AND IC 16-42-5-5.2, I HEREBY APPROVE A VARIANCE OF FOOD PROTECTION RULES AS STATED ABOVE.

GREGORY N. LARKIN, M.D.  
STATE HEALTH COMMISSIONER

By:   
James F. Howell, DVM, MPH, DACVMP  
Assistant Commissioner  
Public Health and Preparedness Commission

cc: ISDH Food Protection Staff  
ISDH Office of Legal Affairs  
Local Health Departments in Indiana  
Eric Marcoux, Red Robin